

**Introduced by Senator Alquist**

February 9, 2005

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An act to add Section 859.5 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 171, as amended, Alquist. Interrogation: recording.

Existing law provides that under specified conditions the statements of witnesses, victims, or perpetrators of specified crimes may be recorded and preserved by means of videotape.

*This bill would enact the Truth in Prosecution Act of 2005, which would require law enforcement officials, as defined, who interview or interrogate persons accused of, arrested for, or charged with, a crime to institute procedures whereby the interview or interrogation is simultaneously recorded and preserved by means of videotape, videodisc, or any other means of preserving audio and video. By imposing these new requirements on local law enforcement, this bill would impose a state-mandated local program provide that (1) any custodial interrogation of an individual relating to a felony offense shall be electronically recorded; (2) the state shall not destroy or alter the electronic recording of a custodial interrogation, except as specified; and (3) if a court finds that a defendant was subjected to an unlawful custodial interrogation, the court shall instruct the jury, as specified. By imposing these new requirements on local law enforcement when they are interrogating a defendant relating to a felony offense, this bill would impose a state-mandated local program upon local government.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature in enacting this  
2 act to require the creation of an electronic record of an entire  
3 custodial interrogation in order to eliminate disputes in court as  
4 to what actually occurred during the interrogation, thereby  
5 improving prosecution of the guilty while affording protection to  
6 the innocent.

7 ~~SEC. 2. Section 859.5 is added to the Penal Code, to read:~~

8 ~~859.5. (a) Law enforcement officials who interview or~~  
9 ~~interrogate persons accused of, arrested for, or charged with a~~  
10 ~~crime shall institute procedures whereby the interview or~~  
11 ~~interrogation is simultaneously recorded and preserved by means~~  
12 ~~of videotape, videodisc, or any other means of preserving audio~~  
13 ~~and video.~~

14 ~~(b) For the purposes of this section, "law enforcement official"~~  
15 ~~includes any officer of the police, sheriff, highway patrol, or~~  
16 ~~district attorney, and any peace officer included in Chapter 4.5~~  
17 ~~(commencing with Section 830).~~

18 *SEC. 2. This act shall be known and may be cited as the Truth*  
19 *in Prosecution Act of 2005.*

20 *SEC. 3. Section 859.5 is added to the Penal Code, to read:*

21 *859.5. (a) (1) Any custodial interrogation of an individual*  
22 *relating to a felony offense shall be electronically recorded,*  
23 *including, but not limited to, the interrogation by a law*  
24 *enforcement officer of an individual suspected of having*  
25 *committed a felony offense.*

26 *(2) The state shall not destroy or alter any electronic*  
27 *recording made of a custodial interrogation of a defendant until*  
28 *the time that a defendant's conviction for any offense relating to*  
29 *the interrogation is final and all direct and habeas corpus*

1 *appeals are exhausted or the prosecution of the defendant for*  
2 *that offense is barred by law.*

3 *(b) If a court finds that a defendant was subjected to a*  
4 *custodial interrogation in violation of subdivision (a), the court*  
5 *shall instruct the jury as follows:*

6 *“The law requires a law enforcement officer, when questioning*  
7 *a person who may be charged with a crime, to record all oral*  
8 *statements made to that person. The failure of a law enforcement*  
9 *officer to follow this law results in less than a full and accurate*  
10 *record of the actual statement made by the defendant, and denies*  
11 *a defendant the ability to present recorded evidence that may be*  
12 *favorable to his or her case.*

13 *You have heard evidence that the defendant made a statement*  
14 *to a law enforcement officer. You are the exclusive judge as to*  
15 *whether the defendant made the statement, and as to what was*  
16 *actually said. If you find that the defendant did not make a*  
17 *statement, you must disregard the evidence of the statement and*  
18 *not consider it for any purpose. If you find that the defendant did*  
19 *make a statement, you must view the statement as reported with*  
20 *caution, because unrecorded oral statements made by a*  
21 *defendant out of court to a law enforcement officer should be*  
22 *viewed with caution.*

23 *You must decide whether or not the defendant in fact made that*  
24 *statement, in whole or in part. The fact that a law enforcement*  
25 *officer did not comply with the law requiring the electronic*  
26 *recording of the reported statement shall be considered by you as*  
27 *a circumstance tending to show that the statement was not made.*  
28 *This failure by the law enforcement officer shall also be*  
29 *considered by you as a circumstance bearing on the weight and*  
30 *credibility to be given to the officer’s account of the statement.”*

31 *(c) For the purposes of this section, the following terms have*  
32 *the following meanings:*

33 *(1) “Custodial interrogation” means express questioning, or*  
34 *its functional equivalent, that a law enforcement officer should*  
35 *know is reasonably likely to elicit an incriminating response from*  
36 *the defendant, under circumstances in which the defendant does*  
37 *not feel free to leave or terminate the questioning.*

38 *(2) “Electronic recording” means a motion picture, videotape,*  
39 *or digital recording that includes both audio and visual*

1 *representations of any interrogator or defendant involved in a*  
2 *custodial interrogation.*

3 (3) “Law enforcement official” means any officer of the  
4 police, sheriff, highway patrol, or district attorney, and any  
5 peace officer included in Chapter 4.5 (commencing with Section  
6 830).

7 ~~SEC. 3.~~

8 SEC. 4. If the Commission on State Mandates determines that  
9 this act contains costs mandated by the state, reimbursement to  
10 local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.